

DECISION



17632
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-200371

DATE: April 2, 1981

MATTER OF: Worldwide Direct Marketing

DIGEST:

[Protest of Air Force Contract Award]

1. Protest questioning specifications filed after closing date for receipt of proposals following contact with contracting officer who, allegedly, stated the specifications would be changed shortly after award is untimely pursuant to our Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1)(1980).
2. Protester's contentions that awardee has a potential claim based on its "low assumption of the data base size" and that Air Force is contemplating awardee providing information with "zero data base" are mere speculation and premature.
3. There is no evidence of record that contract was awarded with intent of changing specifications shortly thereafter. While record contains conflicting statements of protester and contracting agency, other circumstances indicate no actual or planned intention to change specification.

Worldwide Direct Marketing (Worldwide) protests the Department of the Air Force's (Air Force) award of a contract to Computer Print Systems Inc. (CPS) pursuant to request for proposals (RFP) No. F41689-80-R-0031. The RFP solicited nonpersonal services for the Air Force Recruiting Service Lead Management Program which includes "receiving, fulfilling and distributing qualified leads; direct mail; lead tracking and reporting."

Worldwide contends that the contracting officer contemplated a postaward modification and, therefore, the contract should not have been awarded without first amending the RFP. The protest is dismissed in part and denied in part.

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For the past 3 years Worldwide was the incumbent contractor. Worldwide contends that "a major product of this 3-year performance period was the development of a comprehensive computerized data base of names, addresses and telephone numbers instrumental to the performance of the contract services." After the submission of best and final offers on August 14, 1980, Worldwide's contract administrator contacted the Air Force's contracting officer on September 5, 1980, concerning what he termed "an apparent omission" in the RFP. He summarized the telephone conversation in a memorandum, sent to the contracting officer, as follows:

"During our referenced phone conversation I made you aware that there were areas in the referenced RFP that did not give a complete explanation of the work to be performed on the New Recruiting Fulfillment System. These areas are such, that they would cause any contractor other than the incumbent (Worldwide) to necessitate an immediate change of scope and additional monies to fulfill to the expectancy of the user (HRS).

"The total problem lies in the fact that no where in the RFP did it state that a contractor was required to take the existing accumulated recruiting data on file and use it as a base for any future applicant processing. This accumulated data is all important to fulfill contract obligations especially in the area of suppressions, reports and lead tracking information. The RFP's failure to mention these back data files and their relative size (# of names of accumulated) leads any new contractor to believe that all information will commence at 'point zero' when they begin. We as the incumbent may have committed the cardinal sin of all incumbents and that is knowing what the customer wants and expects rather than what was merely asked for. The costs for running all the accumulated files is such that the additional computer time has added a

substantial dollar increase in our bid price, and as such will have to be added to any new contractors price when this requirement is made known."

By affidavit dated September 24, 1980, the Worldwide's contract administrator, with respect to the contracting officer's reaction to his statements, states:

"The Contracting Officer responded that she was aware that the RFP was not perfect in all respects, but that any changes in work that would be required to meet the needs of the user activity would be secured through modification of the contract after award."

Worldwide believes that since "the RFP did not fully describe the scope of work--especially the existing data base (computer file size)--CPS was either unaware of the data base or "counting on a change of scope at some later date." In support of this belief, Worldwide points out that CPS priced Item 0007BA, a monthly report listing the status and disposition of all leads processed pursuant to the program, at \$31 per report. Basing its figures on the 4-month period of August - November 1980, Worldwide states that the average report included 190,354 names; 4,426 pages; 230,195 print lines and took 3.8 hours of computer print time. The total cost for this averaged report is \$296.67. Worldwide argues that in this circumstance it is clear that CPS underpriced the line item. This, Worldwide argues, is additional evidence that award was made with the intent to modify the contract.

Furthermore, Worldwide believes "that the RFP omission, which the contracting officer has expressed a willingness to overlook, concerns a vital data base for numerous functions in the contract's scope of work, and that offerors' price proposals might be impacted by as much as 10 percent." Worldwide also expresses concern that the RFP's mere mention of "historical data" is not enough. Rather, the size of the data base should have been set forth since this factor alone indicates how much time will be

needed for processing on the computer. Therefore, Worldwide suggests that if CPS can show that its assumption of the size of the data base was lower than the actual size, CPS could request and would receive additional funding to process the existing data. Also, Worldwide states that "because of potential difficulties and costs which will be incurred to provide the follow-on contractor with the existing data files, the Air Force is considering allowing CPS to provide information with a zero data base." Worldwide contends that this would be a change in the scope of work contemplated by the RFP.

To the extent that the Worldwide protest, filed with our Office on September 15, 1980, questions the contents of the RFP specifications, it is untimely under 4 C.F.R. § 20.2(b)(1) (1980) since these alleged apparent improprieties were not protested prior to the closing date for receipt of proposals, July 1, 1980.

Worldwide's position is that notwithstanding the fact that objections to the contents of the RFP per se would be untimely, our Office's review of the specifications is necessary to consider the timely filed issue of the contracting officer's intent to make award and shortly thereafter modify the contract. To support its position, Worldwide cites Honeywell Inc., B-199024, August 21, 1980, 80-1 CPD 137, where, after the closing date for receipt of proposals and 2 months after the submission of best and final offers, Honeywell protested that the specifications were unclear and ambiguous. We found the Honeywell protest timely because Honeywell first became aware of the basis for its protest against the specifications after it reviewed a protest filed by another offeror. We noted that Honeywell apparently had no reason to question the specifications prior to receipt of the protest documents which disclosed a different interpretation of the specifications than Honeywell's. The Honeywell case is distinguishable from the instant one. Here, Worldwide admits that the alleged omission was clear from the solicitation; Worldwide did not learn anything new with respect to the specifications as a result of the September 5 contact with the contracting officer. Accordingly, we see no need to review the specifications.

We view Worldwide's bare allegations, that CPS has a potential claim based on its "low assumption of the data base size" and that the Air Force is contemplating CPS's performing with a "zero data base," as being mere speculation as to possible future occurrences. Therefore, we conclude that these aspects of Worldwide's protest have no basis. In any event, these allegations are premature.

The remainder of our decision will discuss "the Contracting Officer's stated intention to modify the contract after award to [CPS], if necessary."

The contracting officer, by affidavit dated December 4, 1980, takes exception to the position of Worldwide's contract administrator. She states:

"At no time during this phone conversation did I acknowledge to [the contract administrator] that the RFP was defective in any way, nor did I state that I intended to modify the contract after it was awarded."

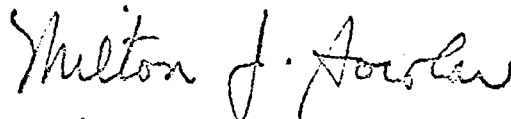
In addition, she states that she has no indication from the using activity of planned changes to the specifications. She also submits that throughout the RFP "it was stated that the contractor was required to use and present historical data and that the only way this could be accomplished was to utilize the existing data base." After a review of the proposals, she concluded that "all offerors presented a clear understanding of the requirements to utilize the existing data files in the performance of the contract." The agency also points out that the existing data base was the subject of several questions and answers during the preproposal conference. CPS supports the agency's position and adds references to its proposal which recognize the role of the existing data base in contract performance.

Subsequent to the award of a Government contract changes or modifications in the terms of the agreement may be required. This does not mean that a change or modification can be utilized so as to interfere with or defeat the purpose of a competitive procurement.

The competition to be achieved by award of a Government contract must be held to the work actually to be performed. Therefore, a contracting officer may not award a contract competed for under a given specification with the intention to change to a different specification after award. Matter of A & J Manufacturing Company, 53 Comp. Gen. 838 (1974), 74-1 CPD 240.

There is no convincing evidence of record that the contract was awarded to CPS with the intent of changing the specifications shortly thereafter. What we have are conflicting statements of the protester and the contracting agency. Worldwide does not dispute the references to the existing data base in the RFP or the information generated at the preproposal conference. Furthermore, we are aware of no changes being made to the contract awarded on the basis of the CPS proposal, which recognized the existing data base. In these circumstance, we do not believe that the protester has met the burden of affirmatively proving its case. Reliable Maintenance Service, Inc.--request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337; Marotta Scientific Controls, Inc., B-188129, October 11, 1977, 77-2 CPD 280.

Worldwide's protest is dismissed in part and denied in part.



Acting Comptroller General
of the United States